

February 21, 2012

Chairman Andrew M. Fleischmann
Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Chairwoman Andrea L. Stillman
Education Committee
Room 3100, Legislative Office Building
Hartford, CT 06106

Dear Madame Chair and Mr. Chair:

We, the undersigned, are advocates and attorneys who represent parents of children with special education needs. We write out of concern that Governor Malloy's Education Reform Initiative, introduced as SB 24, fails to address the huge achievement gap between children with special needs and other children in Connecticut's schools. Further, many of the provisions of SB 24 would, in our view, actually increase the achievement gap between children with special needs and other children.

Children with disabilities lag behind their peers in both reading and math. According to the National Assessment of Educational Progress (NAEP) scores, only 48% of children with disabilities scored at or above basic level in 8th grade math as compared to 79% of students without disabilities. The gap is wide when it comes to reading, with only 55% of children with disabilities scoring at or above basic level in 8th grade as compared to 87% of students without disabilities. If Connecticut's goal is to improve educational outcomes for all children, it must look closely at reducing the achievement gap for children with disabilities.

This gap can be closed through stronger educational programs for children with disabilities. The federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et. seq., and Connecticut's special education laws, C.G.S. 10-76a et. seq., require that school districts provide students with disabilities with a free appropriate public education (FAPE) that is delivered through an Individualized Education Plan (IEP). The standard for what is appropriate rests firmly on state curricular standards. Through special education and related services (as outlined in the IEP) students with disabilities are supposed to be enabled to become proficient and advanced in the state's academic content standards. 20 U.S.C. §1401(9)(B); 20 U.S.C. § 6311(B); 34 C.F.R. §200.1(a), (b), (c). See also, 29 U.S.C. § 794, 34 C.F.R. § 104.4. In other words, IEPs for children with disabilities should aim to bring these students up to proficiency or above on the regular curriculum along with their non-disabled classmates.

The Legislature can and should act to make this promise a reality and close the achievement gap for children with disabilities. Here are some steps the Legislature can take:

1. Increase funding for teachers and aides. Over the last couple of years, the State Department of Education has imposed the Scientific Research-Based Initiative (SRBI) on Connecticut schools. This program mandates tracking educational progress of all students (not just students with disabilities) using a data-intensive model. The staff time necessary to collect and analyze the data is enormous and has, unfortunately, come at the expense of teaching of students, especially the teaching of special education students. Without regard to whether the SRBI mandate makes education sense, and there is plenty of debate on that, the reality is that special education teachers and paraprofessionals are being diverted from students with disabilities to fulfill SRBI responsibilities. To close the achievement gap, the Legislature needs to provide the staffing necessary to meet the IEPs of children with disabilities by providing them with the specially designed instruction that is designed to meet their unique educational needs. SRBI is not special education and it does not provide students with disabilities with the specially designed instruction that is supposed to be provided by an IEP. SB 24 would actually make the situation worse. By tying state funding of districts to compliance with the State Department of Education's initiatives, we are certain to see more data collection and less teaching if the staffing remains the same.
2. Legislation to ensure that parents of children with disabilities can get independent educational evaluations (IEEs) at public expense. Federal regulations, 34 C.F.R. §300.502, provide that parents can secure an independent evaluation, at the cost of the school district, when they do not agree with the district's evaluation, with very few restrictions. Connecticut school districts have issued informal guidelines intended to make it extremely difficult for parents to utilize this right. School districts frequently use their evaluation authority to minimize the concerns of parents, to minimize a child's disability or to minimize the services the child requires. Parents, and particularly parents with fewer economic resources, cannot fight for the services their children need without their own independent and objective evaluation. Without the right to an independent educational evaluation at public expense, these children will not get a good education and the achievement gap will grow. Independent educational evaluations serve three public purposes. First, IEEs often save money. We spend considerable sums educating children with disabilities. The per-pupil cost is more than double that of non-disabled children. The cost of evaluations is relatively low compared to the cost of services. We need to make sure that the services we provide are the ones most likely to produce good results for the specific child. The IEE is a second opinion. Just as most people will not go through major surgery without a second opinion, it does not make sense to commit large resources to treat a child with a disability without a second opinion if there is doubt about the child's condition, strengths, limitations, learning style, etc. Second, IEEs diminish conflict between the parties. Parents who do not believe that the school understands their child have the right to secure their own expert

opinion. To the extent that their expert's opinion is consistent with that of the school, the parents' fears are allayed. To the extent the opinion is different, both sides have the framework to come together on a program for the child. Without the IEE, the parent feels powerless and desperate, far more likely to pursue litigation. Third, IEEs keep the process honest. Without an outside check on the evaluation process of the school, the school has a strong economic interest in evaluating children to fit into their pre-existing programs. Evaluations sometimes become a method of cost-control for school districts. The IEE ensures that the school evaluation process remains legitimate. And, since evaluations are the heart of the IDEA, there is a strong public interest in keeping evaluations credible.

3. Maintain the burden of proof in due process hearings on school boards. School boards have been lobbying to switch the burden of proof to demonstrate that an IEP provides a free appropriate public education from school boards to parents as a way to save money. Clearly, the money these school boards seek to save would come from reducing special education for students with disabilities. With the burden of proof placed on parents, school boards think they can offer weaker IEPs and withstand legal challenges to them. Weaker IEPs inevitably will result in an increase in the achievement gap between children with disabilities and those without. Simply stated, switching the burden of proof will grow the achievement gap. Moreover, changing the burden of proof appears to be a solution in search of a problem. During 2011, the State Department of Education received approximately 250 due process hearing requests. Of that number only 7 cases (0.028%) resulted in fully adjudicated hearings. During 2010, the Department received 528 due process hearing requests, resulting in 16 fully adjudicated hearings (0.030%). In that so few cases have been decided by hearing officers, it is clear that the cost burden of these hearings is de minimis to school districts.

A number of provisions of SB 24 are of considerable concern to us, as advocates for children with disabilities. Earlier in this letter we spoke of the diversion of special education staff away from direct instruction to comply with various Department of Education initiatives. Also of concern is the bill's endorsement of charter and magnet schools. The parental rights of the IDEA are often, in practice, attenuated with regard to these schools. Further, these schools, as well as the state technical schools, frequently discriminate against children with disabilities in their admission policies. For further information on how these alternative schools end up hurting children with disabilities, please see the report on Charter Schools and Students with Disabilities at <http://www.copaa.org/general/charter-schools-and-students-with-disabilities-preliminary-analysis-of-the-legal-issues-and-concerns/>.

The Legislature will consider a number of proposals to address the achievement gap at the upcoming session. Each of these proposals may have an impact on the achievement gap between children with disabilities and those without. So far, there has been very little discussion of children with disabilities and their achievement gap. We look to the Education Committee to bring this issue to the fore and ask the necessary question concerning each proposal: will this proposal reduce or increase the achievement gap for children with disabilities?

Chairman Fleischmann and Chairwoman Stillman
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Sincerely yours,

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